



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1042/2
RNK:jld:rs

2013 BILL

1 **AN ACT to renumber and amend 30.2022 (1); to amend 30.2022 (2), 30.2022**
2 **(3), 30.2022 (4) and 30.2022 (6); and to create 30.2022 (1g), 30.2022 (1m) (b)**
3 **and 283.35 (1g) of the statutes; relating to:** activities affecting waters of this
4 state carried out under the direction of the Department of Transportation.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Natural Resources (DNR) regulates certain activities that occur in or near navigable waters and also administers various environmental laws. In order for a person to conduct an activity in or near a navigable water or to discharge certain pollutants into the air or waters of this state, the person may be required to obtain one or more permits from DNR. Among the environmental permits that DNR issues are storm water discharge permits.

Current law exempts the Department of Transportation (DOT) from obtaining certain navigable waters permits and certain environmental permits affecting waters of this state including storm water discharge permits. The exemptions apply to activities affecting waters of this state that are carried out under DOT's direction and supervision, such as the construction of a highway or bridge (transportation activity), and are subject to certain conditions. Under these conditions, DOT must accomplish the transportation activity in accordance with interdepartmental liaison procedures established by DOT and DNR for the purpose of minimizing the adverse environmental impact of the activity. DOT and DNR must also exchange information and cooperate in planning and carrying out DOT activities in order to alleviate potential detrimental encroachment on the waters of the state.

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The bill provides that, instead of being exempt from any requirement to obtain a storm water discharge permit, DOT must obtain coverage under a DNR permit. This bill requires DNR to issue permits that authorize DOT discharges of storm water from the site of a transportation activity. The bill specifies that a transportation activity covered by a storm water general permit is subject to the interdepartmental liaison procedures that apply under current law to DOT transportation activities.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 30.2022 (1) of the statutes is renumbered 30.2022 (1m) (a) and
2 amended to read:

3 30.2022 (1m) (a) ~~Activities Except as provided in par. (b);~~
4 Transportation

5 activities affecting waters of the state, as defined in s. 281.01 (18), that ~~are carried~~
6 ~~out under the direction and supervision of the department of transportation in~~
7 ~~connection with highway, bridge, or other transportation project design, location,~~
8 ~~construction, reconstruction, maintenance, and repair~~ are not subject to the
9 prohibitions or permit or approval requirements specified under s. 29.601, 30.11,
10 30.12, 30.123, 30.19, 30.195, 30.20, 59.692, 61.351, 62.231, or 87.30 or chs. 281 to 285
11 ~~except 283.33.~~

12 or 289 to 299. However, at the earliest practical time prior to the commencement of
13 these transportation activities, the department of transportation shall notify the
14 department of the location, nature, and extent of the proposed work that may affect
15 the waters of the state.

16 **SECTION 2.** 30.2022 (1g) of the statutes is created to read:

30.2022 (1g) In this section, "transportation activity" means an activity carried
out under the direction and supervision of the department of transportation in

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BILL**SECTION 5**

1 connection with highway, bridge, or other transportation project design, location,
2 construction, reconstruction, maintenance, or repair.

3 **SECTION 3.** ~~30.2022 (1m) (b) of the statutes is created to read:~~

4 ~~30.2022 (1m) (b) Beginning on the date on which the department of natural~~
5 ~~resources issues a general permit under s. 283.35 (1g), 283.33(5m) the~~
6 ~~department of~~

7 ~~transportation may not discharge storm water from the site of a transportation~~
8 ~~activity unless it is authorized to proceed with that discharge under a general permit~~
9 ~~issued under s. 283.35 (1g).~~

Section 3. 283.33(3)(d) of the statutes is created to read:

283.33(3)(d) The Department shall issue a Transportation Separate Storm Sewer System
permit authorizing discharge of municipal storm water by the department of transportation from
sites of transportation activities, as defined in 30.2022(1g) for which permits are required by this
section.

9 **SECTION 4.** 30.2022 (2) of the statutes is amended to read:

10 30.2022 (2) The exemption under sub. (1) does not apply, and the department
11 of transportation may not proceed under a permit issued under s.

12 283.33(5m) unless the transportation activity is
13 accomplished in accordance with

14 interdepartmental liaison procedures established by the department and the
15 department of transportation for the purpose of minimizing the adverse
16 environmental impact, if any, of the transportation activity. If the transportation
17 activity affects a wetland, as defined in s. 23.32 (1), the department of transportation
shall conduct any required mitigation either by complying with the

interdepartmental liaison procedures and any applicable interagency agreement on mitigation banks that is approved by the department of natural resources or by using any of the methods specified in s. 281.36 (3r) (a) 1. to 3.

SECTION 5. 30.2022 (3) of the statutes is amended to read:

30.2022 (3) If the department determines that there is reasonable cause to believe that an a transportation activity being carried out under this section is not in compliance with the environmental protection requirements developed through interdepartmental liaison procedures, it shall notify the department of transportation. If the secretary and the secretary of transportation are unable to agree upon the methods or time schedules to be used to correct the alleged noncompliance, the secretary, notwithstanding the exemption provided in this section or coverage under a permit issued under s. 283.33(5m) may proceed with enforcement actions as the secretary deems appropriate.

SECTION 6. 30.2022 (4) of the statutes is amended to read:

30.2022 (4) The department of transportation and the department shall exchange information and cooperate in the planning and carrying out of such transportation activities in order to alleviate, to the extent practical under the circumstances, any potential detrimental encroachment on the waters of the state.

SECTION 7. 30.2022 (6) of the statutes is amended to read:

30.2022 (6) This section does not apply to transportation activities in the Lower Wisconsin State Riverway, as defined in s. 30.40 (15).

SECTION 8. 283.335(4g 5m) is created to read:

(5m~~4g~~) TRANSPORTATION ACTIVITIES. (a) In this subsection, "transportation activity" has the meaning given in s. 30.3022 (1g).

(b) The department shall issue a ~~a one or more~~ general permit pursuant to this subsection and s. 283.35 authorizing transportation activities to discharge storm water into waters of the

BILL**SECTION 5**

state.

This general permit shall incorporate the interdepartmental liaison procedures outlined in sub. 30.2022(2) and the standards, procedures and substantive requirements of administrative rules promulgated by the department and the department of transportation pursuant to sub. 30.2022.

18

Nonstatutory language:

The department of natural resources shall issue one or more transportation-specific permits [alternate language: "transportation-specific permits authorized under secs. 283.33(3)(d) and 283.33(5m)"] on or before the first day of the 12th month beginning after the effective date of this paragraph [LRB inserts date]. Section 1. will not become effective until such permits authorized under secs. 283.33(3)(d) and 283.33(5m) are in effect.

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(END)

Kite, Robin

From: Landretti, Jane R - DNR <Jane.Landretti@wisconsin.gov>
Sent: Monday, October 14, 2013 3:24 PM
To: Kite, Robin
Cc: Bruhn, Michael L - DNR
Subject: RE: DOT Bill Draft 10_08_13 WisDOT DNR agreed.docx

Robin, I'm with Mike in that I'm sorry that we've made you do so much work on this!

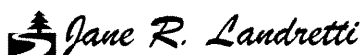
This version says the DNR has to promulgate transportation-specific general permits for DOT, but preserves the DNR's ability to continue to issue individual permits to DOT if a particular project is not eligible to be covered under the general permit. This authority to withdraw coverage under the general permit and issue individual permits appears in 283.35(3). And it comes from the federal law (40 CFR 122.28(b)(3) that provides for the authority of a state agency to require coverage under an individual permit rather than a general permit where factors specifically set forth are present that make a discharge ineligible for GP coverage. In other contexts, EPA has indicated to us that it is very important that we retain the right to issue an individual permits where specific triggers are at play.

We also believed it would be important to EPA that the permits are issued pursuant to 283.33 because that is the key storm water WPDES permit authority. The EPA letter said we should end the DOT exemption from WPDES permitting and indicated it wanted to make sure that these permits had the accompanying authority that comes from being promulgated as a WPDES permit. Also the rules promulgated to apply to storm water projects are authorized by 283.33 and we wanted to make sure those rules would apply to DOT's permits.

We proposed the Transportation Separate Storm Sewer Permit language as one way to address the concern by EPA that DOT is not currently subject to any Municipal Separate Storm Sewer Permit requirements (283.33(3)). DNR would now issue this permit specifically for transportation projects.

Let me know if any of this is unclear. I'd be happy to talk through it or offer more explanation on any of these.

Thanks so much.

 *Jane R. Landretti*

Staff Attorney
Bureau of Legal Services
Wisconsin Department of Natural Resources

(☎) phone: 608.267.7456

(✉) e-mail: jane.landretti@wisconsin.gov

From: Bruhn, Michael L - DNR
Sent: Monday, October 14, 2013 2:41 PM
To: Landretti, Jane R - DNR
Cc: Kite, Robin - LEGIS
Subject: FW: DOT Bill Draft 10_08_13 WisDOT DNR agreed.docx

Jane, can you forward this to Robin??

Thanks!!

Michael Bruhn
Legislative Liaison
Wisconsin Department of Natural Resources
(☎) phone: (608) 266-5375
(✉) e-mail: michael.bruhn@wisconsin.gov
Website: dnr.wi.gov
Find us on Facebook: www.facebook.com/WIDNR

From: Kite, Robin [<mailto:Robin.Kite@legis.wisconsin.gov>]
Sent: Monday, October 14, 2013 2:40 PM
To: Bruhn, Michael L - DNR
Subject: RE: DOT Bill Draft 10_08_13 WisDOT DNR agreed.docx

Mike:

Would it be possible for you to send me a plain language description of the problems that you want to address by these suggested changes? That way I can be sure that the draft achieves your intent.

Thanks!
Robin

From: Bruhn, Michael L - DNR [<mailto:Michael.Bruhn@wisconsin.gov>]
Sent: Monday, October 14, 2013 1:58 PM
To: Kite, Robin
Cc: Landretti, Jane R - DNR
Subject: FW: DOT Bill Draft 10_08_13 WisDOT DNR agreed.docx

Robin,

This is the email that I referenced in my voicemail regarding a redraft (sorry!!!!) of LRB 1042/2. This will be the last time we ask for modifications, DNR and DOT are in agreement on the changes included in the word document below. Please let me know if you have any questions!!

Thanks!!

Michael Bruhn
Legislative Liaison
Wisconsin Department of Natural Resources
(☎) phone: (608) 266-5375
(✉) e-mail: michael.bruhn@wisconsin.gov

Website: dnr.wi.gov

Find us on Facebook: www.facebook.com/WIDNR

From: Landretti, Jane R - DNR

Sent: Tuesday, October 08, 2013 2:11 PM


To: Bruhn, Michael L - DNR

Cc: Graff, Daniel A - DOT

Subject: DOT Bill Draft 10_08_13 WisDOT DNR agreed.docx

Mike,

Here is the DOT bill draft that Dan Graff and I have agreed upon since yesterday's meeting.

 *Jane R. Landretti*

Staff Attorney

Bureau of Legal Services

Wisconsin Department of Natural Resources

(📞) phone: 608.267.7456

(✉️) e-mail: jane.landretti@wisconsin.gov

Called Jane Landretti (DNR attorney) on 12/5/13 to ask additional questions

Jane told me that since we had last spoken, DNR and DOT had agreed that DNR would issue a permit under s. 283.33 and that this would not be a "general" permit as originally requested.

I asked Jane why DNR couldn't just issue the permit under s. 283.33 (1) (a). She said that there was some question as to whether the DOT activities are "industrial activities" as specified in that statute. She said that in order to satisfy EPA, they want to have a specific permit that just applies to transportation activities conducted by DOT.

I also asked Jane why the language she gave me refers to the discharge of municipal storm water. Jane thinks that this is an error in her language and that the intention is to refer to the discharge of just storm water. I also told her that I don't understand why the permit should be called a transportation separate storm sewer system permit. These discharges are not being made into a storm sewer "system". She is going to check on this but agreed that this language while appropriate for municipal storm systems doesn't seem to apply to discharges that will take place at different transportation sites rather than through a single storm sewer "system".

Jane said that she would prefer that the draft not have a deadline for issuing the new permits. But I explained to Jane that with no deadline, DNR would never have to issue the permits. She agreed that DNR should be able to issue these permits within a 2 year period. I told her that I would include nonstatutory language requiring DNR to implement the new permit requirement within 2 years.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-104270
RNK:jld:rs

RM
run
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check
out
NFS

2013 BILL

D-Note

regen. cat.

✓
1 AN ACT *to renumber and amend* 30.2022 (1); *to amend* 30.2022 (2), 30.2022
2 (3), 30.2022 (4) and 30.2022 (6); and *to create* 30.2022 (1g), 30.2022 (1m) (b)
3 and 283.35 (1g) of the statutes; **relating to:** activities affecting waters of this
4 state carried out under the direction of the Department of Transportation. ✓

Analysis by the Legislative Reference Bureau

Under current law, the Department of Natural Resources (DNR) regulates certain activities that occur in or near navigable waters and also administers various environmental laws. In order for a person to conduct an activity in or near a navigable water or to discharge certain pollutants into the air or waters of this state, the person may be required to obtain one or more permits from DNR. Among the environmental permits that DNR issues are storm water discharge permits.

Current law exempts the Department of Transportation (DOT) from obtaining certain navigable waters permits and certain environmental permits affecting waters of this state including storm water discharge permits. The exemptions apply to activities affecting waters of this state that are carried out under DOT's direction and supervision, such as the construction of a highway or bridge (transportation activity), and are subject to certain conditions. Under these conditions, DOT must accomplish the transportation activity in accordance with interdepartmental liaison procedures established by DOT and DNR for the purpose of minimizing the adverse environmental impact of the activity. DOT and DNR must also exchange information and cooperate in planning and carrying out DOT activities in order to alleviate potential detrimental encroachment on the waters of the state.

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This bill requires DNR to issue a general permit that authorizes DOT to discharge storm water from the site of a transportation activity. The bill provides that, instead of being exempt from any requirement to obtain a storm water discharge permit, DOT must obtain coverage under the general permit required to be issued by DNR under this bill. The bill specifies that a transportation activity covered by a storm water general permit is subject to the interdepartmental liaison procedures that apply under current law to DOT transportation activities.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 30.2022 (1) of the statutes is renumbered 30.2022 (1m) (a) and

amended to read:

30.2022 (1m) (a) Activities Except as provided in par. (b), transportation activities affecting waters of the state, as defined in s. 281.01 (18), ~~that are carried out under the direction and supervision of the department of transportation in connection with highway, bridge, or other transportation project design, location, construction, reconstruction, maintenance, and repair~~ are not subject to the prohibitions or permit or approval requirements specified under ~~ss. 29.601, 30.11, 30.12, 30.123, 30.19, 30.195, 30.20, 59.692, 61.351, 62.231, or 87.30 or chs. 281 to 285~~, or 289 to 299. However, at the earliest practical time prior to the commencement of these transportation activities, the department of transportation shall notify the department of the location, nature, and extent of the proposed work that may affect the waters of the state.

SECTION 2. 30.2022 (1g) of the statutes is created to read:

30.2022 (1g) In this section, "transportation activity" means an activity carried out under the direction and supervision of the department of transportation in

✓
, 283.01 to 283.31, or 283.37 to 283.95

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1 connection with highway, bridge, or other transportation project design, location,
2 construction, reconstruction, maintenance, or repair.

3 **SECTION 3.** 30.2022 (1m) (b) of the statutes is created to read:

4 30.2022 (1m) (b) Beginning on the date on which the department of natural
5 resources issues a general permit under s. 283.35 (1g), the department of
6 transportation may not discharge storm water from the site of a transportation
7 activity unless it is authorized to proceed with that discharge under a general permit
8 issued under s. 283.35 (1g).

9 **SECTION 4.** 30.2022 (2) of the statutes is amended to read:

10 30.2022 (2) The exemption under sub. ^(1m)~~(1)~~ does not apply, and the department

11 of transportation may not proceed under a general permit issued under s. 283.35 (1g),

12 unless the transportation activity is accomplished in accordance with
13 interdepartmental liaison procedures established by the department and the
14 department of transportation for the purpose of minimizing the adverse
15 environmental impact, if any, of the transportation activity. If the transportation
16 activity affects a wetland, as defined in s. 23.32 (1), the department of transportation
17 shall conduct any required mitigation either by complying with the
18 interdepartmental liaison procedures and any applicable interagency agreement on
19 mitigation banks that is approved by the department of natural resources or by using
20 any of the methods specified in s. 281.36 (3r) (a) 1. to 3.

21 **SECTION 5.** 30.2022 (3) of the statutes is amended to read:

22 30.2022 (3) If the department determines that there is reasonable cause to
23 believe that an a transportation activity being carried out under this section is not
24 in compliance with the environmental protection requirements developed through
25 interdepartmental liaison procedures, it shall notify the department of

BILL**SECTION 5**

1 transportation. If the secretary and the secretary of transportation are unable to
2 agree upon the methods or time schedules to be used to correct the alleged
3 noncompliance, the secretary, notwithstanding the exemption provided in this
4 section or coverage under a general permit issued under s. 283.35 (1g) may proceed
5 with enforcement actions as the secretary deems appropriate. *plain comma*

6 **SECTION 6.** 30.2022 (4) of the statutes is amended to read:

7 30.2022 (4) The department of transportation and the department shall
8 exchange information and cooperate in the planning and carrying out of such
9 transportation activities in order to alleviate, to the extent practical under the
10 circumstances, any potential detrimental encroachment on the waters of the state.

11 **SECTION 7.** 30.2022 (6) of the statutes is amended to read:

12 30.2022 (6) This section does not apply to transportation activities in the Lower
13 Wisconsin State Riverway, as defined in s. 30.40 (15).

14 **SECTION 8.** 283.35 (1g) of the statutes is created to read:

15 283.35 (1g) ~~TRANSPORTATION ACTIVITIES.~~ (a) In this subsection, "transportation
16 activity" has the meaning given in s. 30.3022 (1g).

17 (b) Instead of issuing a separate permit to the department of transportation
18 authorizing the department of transportation to discharge storm water from a
19 transportation activity site, the department of natural resources shall issue a
20 statewide general permit authorizing that discharge. A transportation activity
21 covered under a general permit issued under this subsection is subject to the
22 interdepartmental liaison procedures established under s. 30.2022 (2). The
23 department of natural resources shall issue a general permit under this paragraph

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on or before the first day of the ~~10th~~ month beginning after the effective date of this
paragraph [LRB inserts date].

(END)

5-2

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1042/3ins.
RNK:.....

INSERT 5-2

SECTION 1. 283.33 (4m) of the statutes is created to read:

283.33 (4m) TRANSPORTATION ACTIVITIES. (a) In this subsection, "transportation activity" has the meaning given in s. 30.2022 (1g).

(b) The department of natural resources shall issue a permit that authorizes the department of transportation to discharge storm water from the site of a transportation activity. The department of transportation may not discharge storm water from the site of a transportation activity unless it has been issued a permit under this subsection.

(c) A permit issued under this section shall incorporate the interdepartmental liaison procedures established under s. 30.2022 (2) for the purpose of minimizing the adverse environmental impact, if any, of the activity.

SECTION 2. Nonstatutory provisions.

(1) The department of natural resources shall complete the activities that it determines are necessary to implement section 283.33 (4m) of the statutes, as created by this act, no later than June 30, 2016.

(2) If the department of natural resources completes the activities that it determines are necessary to implement section 283.33 (4m) of the statutes, as created by this act, before March 1, 2016, it shall notify the legislative reference bureau of that completion. The legislative reference bureau shall publish the notice in the Wisconsin Administrative Register with a statement of the date on which section 283.33 (4m) of the statutes takes effect, as determined under SECTION of this act.

SECTION 3. Effective date.

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auto ref D
(1) This act takes effect on the first day of the 2nd[✓] month beginning after the publication of the notice under SECTION *auto ref A* (2) of this act or July 1, 2016, whichever is earlier.
auto ref C

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1042/3dn

RNK:.....

date

jld

Mike Bruhn:✓

This redraft incorporates changes requested by Jane Landretti. Please note the following:

1. Under s. 283.33 (4),✓ stats., an owner or operator who discharges storm water through a municipal separate storm sewer system must submit certain information to the owner or operator of the municipal system if the discharge is associated with an industrial activity or a construction site. Are there circumstances under which the Department of Transportation (DOT)✓ might discharge storm water through a municipal separate sewer system? If so, it appears that current law would require DOT to submit the specified information because, presumably, DOT would be discharging the storm water in association with a construction site activity. Do you agree? If so, do you want to provide an exemption to this requirement for DOT? If not, do you specifically want to require DOT to provide the specified information to the municipality?

2. Under s. 283.33 (9),✓ stats., the Department of Natural Resources (DNR)^{gr} must set permit fees by rule for persons issued a permit under s. 283.33. Because this draft creates a new permit requirement for the DOT under s. 283.33, DOT will be required to pay a permit fee. Is this consistent with your intent?

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1042/3dn
RNK:jld:jm

December 10, 2013

Mike Bruhn:

This redraft incorporates changes requested by Jane Landretti. Please note the following:

1. Under s. 283.33 (4), stats., an owner or operator who discharges storm water through a municipal separate storm sewer system must submit certain information to the owner or operator of the municipal system if the discharge is associated with an industrial activity or a construction site. Are there circumstances under which the Department of Transportation (DOT) might discharge storm water through a municipal separate storm sewer system? If so, it appears that current law would require DOT to submit the specified information because, presumably, DOT would be discharging the storm water in association with a construction site activity. Do you agree? If so, do you want to provide an exemption to this requirement for DOT? If not, do you specifically want to require DOT to provide the specified information to the municipality?
2. Under s. 283.33 (9), stats., the Department of Natural Resources must set permit fees by rule for persons issued a permit under s. 283.33. Because this draft creates a new permit requirement for the DOT under s. 283.33, DOT will be required to pay a permit fee. Is this consistent with your intent?

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

Kite, Robin

From: Bruhn, Michael L - DNR <Michael.Bruhn@wisconsin.gov>
Sent: Friday, December 20, 2013 1:21 PM
To: Kite, Robin
Subject: FW: DRAFT LRB bill on DOT storm water permitting
Attachments: 20131212164008237.pdf

Hi Robin,

I sincerely hope these are the absolute last revisions that I need to request for LRB 1042/3. Attached below (my signature line) is a mark-up of the draft that is being requested by the DOT that the DNR is concurring with. If you have any questions, please let me know.

Thanks!!!

Michael Bruhn
Legislative Liaison
Wisconsin Department of Natural Resources
(☎) phone: (608) 266-5375
(✉) e-mail: michael.bruhn@wisconsin.gov
Website: dnr.wi.gov
Find us on Facebook: www.facebook.com/WIDNR

From: Siebert, David R - DNR
Sent: Tuesday, December 17, 2013 8:10 AM
To: Bruhn, Michael L - DNR; Johnson, Kenneth G - DNR; Lowndes, MaryAnne - DNR
Cc: Bertolacini, Jim K - DNR; Rasmussen, Russell A - DNR; Biersach, Pamela A - DNR; Landretti, Jane R - DNR; Lentz, Ryan D - DNR
Subject: RE: DRAFT LRB bill on DOT storm water permitting

Here is mark up of DOT changes. We support these.

BILL

This bill requires DNR to issue a permit that authorizes DOT to discharge storm water from the site of a transportation activity. The bill provides that, instead of being exempt from any requirement to obtain a storm water discharge permit, DOT must obtain the permit required to be issued by DNR under this bill. The bill specifies that a transportation activity covered by a storm water permit is subject to the interdepartmental liaison procedures that apply under current law to DOT transportation activities.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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2 amended to read:

3 30.2022 (1m) ~~Activities~~ Transportation activities affecting waters of the state,
4 as defined in s. 281.01 (18), ~~that are carried out under the direction and supervision~~
5 ~~of the department of transportation in connection with highway, bridge, or other~~
6 ~~transportation project design, location, construction, reconstruction, maintenance,~~
7 ~~and repair~~ are not subject to the prohibitions or permit or approval requirements
8 specified under ~~s. ss.~~ ss. 29.601, 30.11, 30.12, 30.123, 30.19, 30.195, 30.20, 59.692,
9 61.351, 62.231, ~~or 87.30, 283.01 to 283.31, or 283.37 to 288.05 or~~ chs. 281 ^{to} 285 ^{except for} ~~or~~ ^{s. 283.33,}
10 289 to 299. However, at the earliest practical time prior to the commencement of
11 these transportation activities, the department of transportation shall notify the
12 department of the location, nature, and extent of the proposed work that may affect
13 the waters of the state.

14 **SECTION 2.** 30.2022 (1g) of the statutes is created to read:

15 30.2022 (1g) In this section, "transportation activity" means an activity carried
16 out under the direction and supervision of the department of transportation in

BILL

SECTION 5

1 transportation activities in order to alleviate, to the extent practical under the
2 circumstances, any potential detrimental encroachment on the waters of the state.

3 SECTION 6. 30.2022 (6) of the statutes is amended to read:

4 30.2022 (6) This section does not apply to transportation activities in the Lower
5 Wisconsin State Riverway, as defined in s. 30.40 (15).

6 SECTION 7. 283.33 (4m) of the statutes is created to read:

7 283.33 (4m) TRANSPORTATION ACTIVITIES. (a) In this subsection, "transportation
8 activity" has the meaning given in s. 30.2022 (1g).

9 (b) The department of natural resources shall issue a permit ^{general} that authorizes ^{pursuant to this}
10 the department of transportation to discharge storm water from ^{subsection and s. 283.35} the site^s of a
11 transportation activity. The department of transportation may not discharge storm
12 water from the site of a transportation activity unless it ^{is covered by} ~~has been issued a~~ permit
13 under this subsection.

14 (c) A permit issued under this section shall incorporate the interdepartmental
15 liaison procedures established under s. 30.2022 (2) ^{and the standards, procedures and} ~~for the purpose of minimizing the~~
16 ~~adverse environmental impact, if any, of the activity.~~

17 SECTION 8. Nonstatutory provisions.

18 (1) The department of natural resources shall complete the activities that it
19 determines are necessary to implement section 283.33 (4m) of the statutes, as
20 created by this act, no later than June 30, 2016.

21 (2) If the department of natural resources completes the activities that it
22 determines are necessary to implement section 283.33 (4m) of the statutes, as
23 created by this act, before March 1, 2016, it shall notify the legislative reference
24 bureau of that completion. The legislative reference bureau shall publish the notice
25 in the Wisconsin Administrative Register with a statement of the date on which

substantive requirements of administrative
rules promulgated by the department and the
department of transportation pursuant to s. 30.2022.

BILL

1 section 283.33 (4m) of the statutes takes effect, as determined under SECTION 9 (1)
2 of this act.

3 **SECTION 9. Effective date.**

4 (1) This act takes effect on the first day of the 2nd month beginning after the
5 publication of the notice under SECTION 8 (2) of this act ~~or July 1, 2016, whichever is~~
6 ~~earlier.~~ ✓

7 (END)

Kite, Robin

From: Graff, Daniel A - DOT <Daniel.Graff@dot.wi.gov>
Sent: Wednesday, January 08, 2014 12:44 PM
To: Kite, Robin; Landretti, Jane R - DNR
Cc: Graff, Daniel A - DOT
Subject: Materials for Call on Effective Date Issue

Robin,

I'm sharing some materials for consideration in our conversation at 1:00.

First, as Jane has already seen, an example, namely s. 85.515(2)(b), Wis. Stats. of a delayed effective date until a specific agency action is taken, as WisDOT is requesting for Section 9 of the storm water bill draft LRB-1042/3.



2014010812091...

Second, a selection from the 2001 version of "Sutherland Statutory Construction" [Dec. 2001 edition, which is the last one available to me] discussing how laws can be enacted with a postponed time for taking effect. See the third page especially.



2014010812092...

Also, Robin, Paul Nilsen in our office, who formerly worked at LRB and shared with me the 2009-2010 Wisconsin Bill Drafting Manual, which is probably pretty close to the current one. The 2008/9 drafting manual's s. 7.05 does provide a bill may be drafted to take effect upon the later fulfillment of certain conditions – albeit with caveats. I can explain in detail why WisDOT believes that the delay is warranted in this situation in our call at 1:00.

DAN

From: Landretti, Jane R - DNR
Sent: Wednesday, January 08, 2014 9:06 AM
To: Kite, Robin - LEGIS; Graff, Daniel A - DOT
Subject: RE: Call request on DOT effective date issue

Yes, I think 1:00 works for both of us. If you call me, I will dial in Dan.

Thanks much.

Jane
7-7456

From: Kite, Robin [<mailto:Robin.Kite@legis.wisconsin.gov>]
Sent: Wednesday, January 08, 2014 9:04 AM
To: Landretti, Jane R - DNR
Subject: RE: Call request on DOT effective date issue

Jane,

I am preparing for a meeting to begin shortly. The meeting may not end until after 10. Could you call at about 1:00?


Robin

From: Landretti, Jane R - DNR [<mailto:Jane.Landretti@wisconsin.gov>]
Sent: Wednesday, January 08, 2014 9:02 AM
To: Kite, Robin; Graff, Daniel A - DOT
Subject: Call request on DOT effective date issue

Robin,

When you return to your desk, could you suggest a good time today for Dan Graff and me to call you? We are both available until 10 this morning, and most of the afternoon.

Thanks much.

 *Jane R. Landretti*

Staff Attorney
Bureau of Legal Services
Wisconsin Department of Natural Resources
(☎) phone: 608.267.7456
(✉) e-mail: jane.landretti@wisconsin.gov

Tel. conf. with Jane Landretti (DNR) and Dan Graf (DOT) – 1/8/14

The main purpose of the tel. conf. was so that Dan could explain why he did not want the effective date to provide that the bill takes effect no later than July 1, 2016. I explained that if there is no end date, the bill could never take effect. I then explained our general prohibition (per the drafting manual) of including contingent effective dates. I told him that there are very few examples of such dates and the ones that exist are extremely problematic for all of the reasons specified in the drafting manual. He insists on removing that date. I told him that I would try and come up with a reasonable alternative and get back to him.

We discussed the other relatively minor changes. I explained that some of the requested changes contravene our drafting conventions but agreed to those minor changes. We discussed at length the item on page 4 lines 15 and 16 and Dan's handwritten additions. In particular, I didn't understand why the language about "standards, procedures and substantive requirements" of rules was necessary because there isn't anything else in a rule so this language is superfluous. Dan said that Tran 401, Adm. Code is the relevant rule. He said that the rule was promulgated under s. 30.2022 (I do not see how DOT has authority to promulgate a rule under ch. 30). The purpose of Dan's requested language is to ensure that the general permit incorporates not only the interdepartmental liaison procedures under s. 30.2022 but also incorporates the rules promulgated by DNR and by DOT under s. 30.2022.

We discussed the possibility of requiring DNR and DOT to enter into a memorandum of understanding that establishes a date by which the general permit must issue. Dan thinks this obviates the need for the effective date deadline but I told him that I do not think such a memorandum solves the problem. Dan thinks that if DNR fails to issue the permit and DOT is no longer exempt under s. 30.2022, then DOT will be vulnerable to "citizen suits".

1/9/-

Follow up w/ Jane - I suggested that I talk to Mike Bruhn to discuss the effective date issue - she concurred -

Spoke to Mike Bruhn - they insist on "contingent" effective date. I explained that at the very least, this ~~must~~ effective date must go in the statutes. Mike said this is fine.

Kite, Robin

From: Kite, Robin
Sent: Friday, January 24, 2014 8:06 AM
To: Graff, Daniel A - DOT
Cc: Schulze, John J Jr - DOT; Graff, Daniel A - DOT; Landretti, Jane R - DNR; Miller, Steve
Subject: RE: Call request on DOT effective date issue

Dan:

I'm not sure what you mean when you say that the issue is unresolved. I am currently working on a redraft of this draft. As I'm sure you know, this time in the legislative session is one of the busiest for drafters. I hope to have a redraft finished soon. You may wish to wait to see the redraft before we discuss this issue further. But if you prefer to give me a call before you have the new version of the draft, I would be happy to talk about the draft with you.

Thanks.
Robin

From: Graff, Daniel A - DOT [<mailto:Daniel.Graff@dot.wi.gov>]
Sent: Thursday, January 23, 2014 4:58 PM
To: Landretti, Jane R - DNR; Kite, Robin; Miller, Steve
Cc: Schulze, John J Jr - DOT; Graff, Daniel A - DOT
Subject: RE: Call request on DOT effective date issue

Jane and Robin,

I am told that the issue we discussed earlier this month is still unresolved. For context, the DOT has strong concerns over Section 9 of the bill draft is drafted so that the legislation becomes effective on July 1, 2016, as shown in the attached pdf.

<< File: 20131212164008237.pdf >>

DOT's concerns relate to the risk that, should the general storm water permit authorized by other provisions of the bill not be promulgated by WDNR by July 2016, the exemption from s. 283.33 would still end and DOT would risk Clean Water Act citizen suits under 33 USC § 1365.

I have previously shared with you an email with examples of contingent effective dates and an excerpt from the Sutherland Statutory Construction treatise that provides a statute may take effect upon the happening of a contingency. For context, my previous email is attached.

<< Message: Materials for Call on Effective Date Issue >>

In an effort to resolve this matter, my supervisor and DOT chief counsel John Schultze asked me to share these materials again and see if we can resolve this. Please be advised John and I will try to call LRB tomorrow.

Sincerely,

DAN GRAFF

From: Landretti, Jane R - DNR
Sent: Wednesday, January 08, 2014 9:06 AM

To: Kite, Robin - LEGIS; Graff, Daniel A - DOT
Subject: RE: Call request on DOT effective date issue

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Thanks much.



Jane R. Landretti

Staff Attorney
Bureau of Legal Services

Wisconsin Department of Natural Resources

(☎) phone: 608.267.7456

(✉) e-mail: jane.landretti@wisconsin.gov